



# *The Commonwealth of Massachusetts*

## *Department of Revenue*

*Leverett Saltonstall Building,*

*100 Cambridge Street, Boston 02204*

L. JOYCE HAMPERS  
COMMISSIONER

January 6, 1981

You request a ruling on whether contributions to a tax-sheltered annuity plan ("TSA") are subject to Massachusetts income tax under General Laws Chapter 62.

After six months of employment, an employee of the Health Center may elect coverage under a TSA. An employee electing coverage agrees to a reduction in his salary, and his employer agrees to turn over this amount and an additional sum, equal to 3.2% of the employee's gross income, to the TSA. The employee may terminate the agreement at any time with respect to amounts not yet earned.

Under Internal Revenue Code Section 403(b), amounts contributed by Code Section 501(c)(3) employers to certain annuities are excludable from the employee's gross income to the extent that the aggregate of the employer's contributions does not exceed the exclusion allowance as defined in Section 403(b)(2). Federal Regulation 1.403(b)-1(b)(3) characterizes amounts contributed to a TSA by way of a salary reduction agreement as employer contributions.

Employer contributions resulting from a salary reduction agreement are "wages" for purposes of the Federal Insurance Contributions Act; but are not "wages" for federal withholding tax purposes. (Rev. Rul. 65-208, 1965-2 C.B. 383; Rev. Rul. 65-207, 1965-2 C.B. 414).

January 6, 1981

Massachusetts gross income is federal gross income with certain modifications (G.L. c. 62, s. 2). Under Chapter 62, Section 2(a)(1)(D), contributions to a TSA which are made pursuant to a salary reduction agreement and which are not required under a retirement program of the employer are includable in Massachusetts gross income.

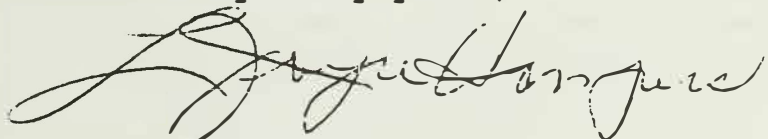
Income is subject to Massachusetts withholding if it is both taxable under Massachusetts General Laws Chapter 62 and subject to federal income tax withholding (G.L. c. 62B, s. 2).

Based on the foregoing, it is ruled that:

1. For purposes of General Laws Chapter 62, Section 2(a)(1)(D), both the contributions resulting from the salary reduction agreements and the contribution of an amount equal to 3.2% of an employee's gross income are employer contributions which are made pursuant to a salary reduction agreement and which are not required under a retirement program of the employer. These contributions are subject to Massachusetts income tax and should be reported on the employee's Wage and Tax Statement (Form W-2).

2. To the extent that these contributions are not subject to federal income tax withholding, they are not subject to Massachusetts withholding.

Very truly yours,

A handwritten signature in dark ink, appearing to read "James H. Longue", is written over the typed name of the Commissioner of Revenue.

Commissioner of Revenue

LJH:DMH:mf